

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 9, 2009 Session

JOANN A. BOYATT v. BOYCE WAYNE BOYATT

**Appeal from the Chancery Court for Scott County
No. 9249 Billy Joe White, Chancellor**

No. E2008-00934-COA-R3-CV - FILED MAY 18, 2009

This is a divorce case. After dissolving the marriage of Joann A. Boyatt (“Wife”) and Boyce Wayne Boyatt (“Husband”), the trial court divided the marital property and awarded Wife alimony. Husband appeals, challenging the lump-sum award to Wife of \$98,000 as her share of the marital estate and the award of alimony. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Max Huff, Oneida, Tennessee, for the appellant, Boyce Wayne Boyatt.

Johnny V. Dunaway, LaFollette, Tennessee, for the appellee, Joann A. Boyatt.

OPINION

I.

This is the second time that this marriage of some 25 years has been before us. Wife filed for divorce in June 2004, alleging grounds of inappropriate marital conduct and irreconcilable differences.¹ In his counterclaim, Husband alleged inappropriate marital conduct, irreconcilable differences and adultery. A day-long bench trial was held on May 24, 2006. At that time, Wife was 57 and Husband was 61; they had one adult child.

Neither party brought significant assets or debt to the marriage other than two tracts of land owned by Husband with a brother. Wife claimed no interest in these properties. Wife has a 10th grade education. During the marriage, she worked for 20 years at various positions for Hartco, most recently as an assembly line worker. Wife stopped working in 2002 because of health problems.

¹Wife first filed for divorce in 2001, but the parties reconciled.

She described her health as “not very good,” explaining that she had undergone 10 - 11 major operations including two for broken legs, two bladder surgeries, a partial hysterectomy, carpal tunnel surgeries, rotator cuff surgery and thyroid surgery. At trial, she testified that she had “an adrenal gland tumor” that needed attention and had also been diagnosed with multiple sclerosis. She had no health insurance. When she left her job, she cashed out a \$9,000 pension plan, the proceeds from which were used to improve the marital home.

Wife testified that she filed for divorce in 2004 because Husband began staying out all night, drinking and telling her he had other women. Since the parties separated, Wife continued to live in the marital home and Husband paid her temporary support of \$428 a month. The marital home was built by Husband’s brother about 10 years after the parties married. At trial, Wife testified that she had \$200 in the bank, no other place to live and no income source other than the temporary support from Husband. She estimated that her monthly expenses, excluding any taxes or insurance, were about \$700. Wife said she had filed, without an attorney, for social security disability benefits because of her physical ailments and conditions. Wife drove a 1999 Dodge Durango pick-up truck that Husband purchased for cash in 2002.

Wife was not involved in Husband’s business endeavors. During the marriage, Husband had always deposited his weekly paycheck into a joint account from which Wife paid the parties’ household expenses and other marital debt. Husband had a separate business checking account to which Wife had no access.

The marital property included three pieces of real property: (1) The marital home, valued at \$98,000, (2) a half-interest in 21 acres owned by Husband and his brother, Dale, valued at \$175,000 with equity of \$93,000 and (3) a 20-acre tract of land (the “Leatherwood Road property”), valued at \$140,000. Husband’s non-marital property included a half-interest in a 25-acre tract (the “Helenwood property”) valued at \$200,000, and a 20-acre tract (the “Colditz property”) valued at approximately \$40,000. The remaining marital property included the vehicles and equipment Husband used personally and in his business, “Wayne Boyatt Excavating.” He had a 2003 Ford F-350 truck, a 1997 Ford truck, a 1984 Buick, a 1980 Kenworth tractor, a 1981 East dump truck, a Great Dane box semi-trailer, four backhoes, two bulldozers, and two trenchers.

The testimony at trial demonstrated that Boyatt Brothers Excavating was a company formed by Husband and his two brothers, Deffis and Dale, for the sole purpose of meeting the necessary licensing and bonding requirements for bidding and performing large excavation projects; each brother did not have sufficient assets to do so on his own. Although projects were bid under and payments were received by the company, each brother was then paid directly for the projects that he individually performed. Each brother had his own machinery and employees that performed the jobs that he completed so that there were essentially three separate companies that subcontracted the projects awarded to “Boyatt Brothers Excavating.”

Testimony from bank representatives indicated that Husband’s total debt for “Wayne Boyatt Excavating” was \$730,000. In addition, Husband was obligated for all of the business debts of his two brothers, as they were for him, under guaranties and cross-collateralization agreements that Husband and his brothers had executed in 1992 and 2002. The three brothers’ combined total

business debt was \$930,000 and their combined assets were valued at \$1.4 million. Wife had signed an initial guaranty covering the brothers' real property debt in 1992, but refused to sign 2002 agreements that covered the business vehicles, equipment and all other business debts of the brothers.

According to their banker, the value of the equipment, property and other assets of the Boyatt brothers "on paper" far exceeded the amount of debt owed to the bank. However, the bank took the position that before any asset, including the marital home, would be released as collateral, the bank would expect to be paid its full value to ensure that the bank did not become under-collateralized. With respect to Husband's debts, the bank applied any payments Husband made to his outstanding loans as it deemed appropriate. Husband's loans were current and had always been paid as expected. In his 2002 financial statement, Husband valued his personal assets at \$1.2 million and his liabilities at \$548,000, for a net worth of \$665,000.

Husband testified that he was working part-time, but had not submitted any bids near the time of the trial. He said he was "getting ready to quit" working on his doctor's advice because of his health problems with high blood pressure and trouble sleeping. Husband drew a military disability benefit of \$945 a month in connection with his service in Vietnam. In addition to his monthly military disability, Husband took home a salary of \$440 per week from his business, for a total monthly income, including disability, of \$2705. He had been living in a one-bedroom apartment since the parties separated in September 2004. He said the parties separated after he caught Wife "fooling with" another man.

At the conclusion of the trial below, the court opined that if it had to decide the lawsuit that day, it would be forced to order a sale and division of the marital property and both parties would "be hurt real bad." The trial court explained that the debts to the bank would probably be paid although he cautioned that selling construction equipment was "always iffy." Beyond that, the court suggested it was likely that "neither party is going to come out with anything." The court encouraged the parties to reach a settlement concerning the distribution of the marital property. Hearing the court's concerns, Husband's counsel requested a three-week continuance. The parties returned to court after they were unable to agree on a settlement. The trial court found that both parties had committed adultery and neither was entitled to a divorce and dismissed both complaints. On appeal, this Court reversed and remanded for entry of an order declaring the parties divorced.²

At a February 2008 hearing on remand, the trial court heard supplemental testimony that showed that since the trial, Husband had paid down the principal on his various bank loans by \$280,000. This included paying off the marital home in full. Husband's tax returns showed that he earned a gross income of \$974,652 in 2006 and \$781,569 in 2007, and his net income averaged about \$30,000 per year.

²See *Joann A. Boyatt v. Boyce Wayne Boyatt, et al.*, No. E2006-01462-COA-R3-CV (Tenn. Ct. App., filed June 19, 2007).

At the conclusion of the hearing, the trial court initially stated its intention to award Wife, as alimony in solido, the marital residence, as well as “half of [Husband’s] VA check by assignment,” and the truck she had been driving. In March 2008, the parties returned to court for clarification of the nature of the lump-sum cash award to Wife. In its April 8, 2008 final judgment, the trial court expressly deemed the “payment of \$98,000 . . . a division of marital assets and not . . . a taxable event.” In addition to granting the parties an absolute divorce, the trial court’s final order, in its entirety, provides as follows:

That [Wife] shall be vested with title and possession to the 2000 Dodge Durango Pick-Up Truck and [Husband] shall execute and deliver title for the pick-up truck to [Wife’s] counsel.

That [Husband] shall be vested with title and possession of all real property and all items of personal property which were acquired during the marriage. That [Wife] shall execute Quit Claim Deeds, titles or any other documents necessary to transfer title to [Husband].

That [Husband] shall pay to [Wife] the sum of \$98,000 cash for [Wife’s] equity in the parties[’] real and personal property. The monies shall be paid by First Trust Savings Bank issuing a cashier[’]s check payable to [Wife] and her attorney . . . in the sum of \$98,000 from [Husband’s] line of credit at First Trust Savings Bank account number 36593.

That each party shall be vested with the items of household furnishings previously divided between the parties; but all furniture in the house remains.

That [Husband] shall be solely responsible for payment of all indebtedness owed to First Trust Savings Bank, and he shall indemnify and hold [Wife] harmless from payment of the same.

That [Wife] shall be awarded as alimony the sum equal to one-half of the monthly VA Benefit received by [Husband]. [Husband] shall pay directly to [Wife] one-half of his VA Benefit on or before the 15th day of each month commencing March 15, 2008. If the Veterans Administration will accept a Qualified Domestic Relations Order (QDRO) or other document to establish a direct payment to Plaintiff of fifty percent of [Husband’s] VA Benefit, then [Wife] shall prepare the required documents. Until such time as VA makes direct payment, then [Husband] should be responsible for delivery of the alimony payment to [Wife] on or before the 15th day of each month. The alimony payment shall be for life or until [Wife] remarries.

That each party shall be responsible for payment of their own attorney fees.

That [Wife] may submit a Motion with supporting documents for discretionary costs for the Court's consideration.

The Court costs shall be taxed to [Husband] for which execution may issue.

(Capitalization in original). Husband timely filed a notice of appeal.

II.

Husband raises two issues on appeal, which issues present the following questions:

1. Did the trial court err in awarding Wife one half of Husband's Veterans Administration disability benefit?
2. Did the trial court abuse its discretion by requiring Husband to borrow \$98,000 to give to Wife as a marital property division of assets and debts?

III.

A.

Our review of the trial court's findings of fact is de novo upon the record of the proceedings below, accompanied by a presumption of correctness, a presumption we must honor unless the preponderance of the evidence is against those findings. Tenn. R. App. P. 13(d); **Wright v. City of Knoxville**, 898 S.W.2d 177, 181 (Tenn. 1995); **Union Carbide Corp. v. Huddleston**, 854 S.W.2d 87, 91 (Tenn. 1993). There is no presumption of correctness as to the trial court's conclusions of law. **Kendrick v. Shoemaker**, 90 S.W.3d 566, 569 (Tenn. 2002); **Campbell v. Florida Steel Corp.**, 919 S.W.2d 26, 35 (Tenn. 1996).

B.

A trial court has broad discretion in fashioning a division of marital property. **Fisher v. Fisher**, 648 S.W.2d 244, 246 (Tenn. 1983); **Barnhill v. Barnhill**, 826 S.W.2d 443, 449-50 (Tenn. Ct. App. 1991). It has the same broad discretion with respect to an award of alimony. *See Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995)

In evaluating whether a trial court has abused its discretion, we are bound by the principle that the trial court "will be upheld so long as reasonable minds can disagree as to propriety of the decision made." **Eldridge v. Eldridge**, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting **State v. Scott**, 33 S.W.3d 746, 752 (Tenn. 2000) and **State v. Gilliland**, 22 S.W.3d 266, 273 (Tenn. 2000)). A trial

court abuses its discretion when it “applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.” *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999) (citation omitted). An appellate court cannot substitute its judgment for that of the trial court. See *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

IV.

Husband first takes issue with the award of alimony to Wife. As noted, the trial court specifically awarded Wife a “sum equal to one-half” of Husband’s military disability pay. Husband asserts that under Tennessee case law, “[m]ilitary disability pay cannot be touched . . . for alimony purposes.” This is an inaccurate statement of the law. In *Oakes v. Oakes*, 235 SW3d 152 (Tenn. Ct. App. 2007), relied upon by Husband, this court reversed the award of one-half of Husband’s military disability benefit to Wife *in its distribution of the marital assets*. On appeal, Wife conceded that this was error because such benefits are not considered marital property. “[S]tate courts cannot treat disability pay as marital property subject to division upon divorce.” *Id.* at 157 (quoting *Hillyer v. Hillyer*, 59 S.W.3d 118, 119 (Tenn. Ct. App. 2001) and *Smith v. Smith*, No. M1998-00937-COA-R3-CV, 2001 WL 242562 at *1 (Tenn. Ct. App. M.S., filed March 13, 2001)).

The present case is easily distinguished. Here, the trial court did not classify and distribute a portion of Husband’s military disability as marital property. The record clearly shows that the trial court simply considered Husband’s military disability in determining the alimony award. This is certainly permissible. To this court’s knowledge, “[t]here is no law . . . which prohibits state courts from considering a spouse’s military disability pay in determining the non-military spouse’s alimony award.” *Oakes*, 235 S.W.3d at 161 (citing *Gragg v. Gragg*, 12 S.W.3d 412, 418-19 (Tenn. 2000) (stating, in a discussion of the court’s treatment of non-military disability benefits, that “disability benefits which replace future income should not be classified as marital property. . . . disability benefits should be considered when determining alimony and child support obligations.”)). Moreover, despite its earlier-stated intention to award Wife half of Husband’s military disability “by assignment,” the trial court ultimately found that alimony in a “*sum equal to one-half*” of that benefit, was appropriate. (Emphasis added).

In determining alimony, a trial court shall consider the factors set forth in Tenn. Code Ann. § 36-5-121(i)(1-12) to the extent those factors are relevant to the facts of a given case. Those factors are as follows:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party’s earnings capacity to a reasonable level;

- (3) The duration of the marriage;
- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
- (7) The separate assets of each party, both real and personal, tangible and intangible;
- (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
- (9) The standard of living of the parties established during the marriage;
- (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
- (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Among the cited factors, the “real need of the [disadvantaged] spouse seeking the support is the single most important factor . . . [and next] the courts most often consider the ability of the obligor spouse to provide support.” *Aaron v. Aaron*, 909 S.W.2d at 410. (citation omitted). With regard to these factors, Husband submits that the trial court erred in its determination of alimony by failing to consider his age and medical condition, “the amount of social security funds that [Wife] now draws,” and the relative fault of the parties in precipitating the divorce.

The proof shows that Wife was severely economically disadvantaged in the divorce. Wife’s estimated monthly expenses were only \$700 per month, excluding any taxes or insurance on her truck and the marital home. However, the evidence was undisputed that Wife had no source of income other than the \$428 in temporary support Husband was paying her. She had applied her entire, small retirement fund to home improvements. Moreover, Wife has a 10th grade education, multiple health problems that prevented her from continuing to work at her assembly-line job, and was without health insurance. Husband, on the other hand, had maintained an annual gross income

approaching or exceeding a million dollars since at least 2002. He earned a net income of roughly \$30,000 a year even in the year after the trial despite testifying that he planned to quit working because of health issues. Husband's monthly income from his military benefit and salary was \$2705. In addition, he used his business account to pay for personal expenses and purchases at his discretion. In short, the proof clearly established Wife's need for and Husband's ability to pay alimony as ordered.

Husband's assertion that the trial court neglected to consider "the amount of social security funds that [Wife] now draws herself" is simply without merit. At the trial, Wife testified only that she, without the benefit of an attorney, had applied for benefits. No evidence at the trial or the February 2008 hearing showed that she was receiving any payments or had even been approved for social security disability. As a result, the trial court cannot be faulted for not addressing this non-factor. Husband's assertion that the trial court erred in failing to consider Wife's relative fault in precipitating the divorce is equally without merit. Husband submits that Wife was solely at fault in the demise of the marriage. He seemingly suggests that this factor should override all others to deny her any support. Husband testified at the trial as follows:

Q: How do you expect [Wife] to live after twenty-six years of marriage to you?

A: Hey, I didn't tell her to start fooling around with Arthur. Let Arthur keep her up. He's the one sleeping with her, let him keep her up.

Q: She has absolutely nothing, does she?

A: Yeah, she's got Arthur.

Q: What else has she got?

A: That's all she needs, I reckon.

Fault is one factor that the trial court, in its discretion, may consider in determining alimony. The proof was undisputed, however, that both parties were involved with other individuals at least since their separation. In initially dismissing both parties' complaints in 2006, the trial court expressly found that both had committed adultery. On remand, the trial court granted the parties an absolute divorce as instructed but did not revisit the issue of fault. The trial court was within its discretion in this regard. Even if the trial court had assigned all of the fault to Wife, as Husband insists is appropriate, this was but one factor it could consider. Again, however, need and ability to pay are, generally speaking, the most important factors. *Varley v. Varley*, 934 S.W.2d 659, 668 (Tenn. Ct. App. 1996); *Loyd v. Loyd*, 860 S.W.2d 409, 412 (Tenn. Ct. App. 1993).

Lastly, Husband asserts that the alimony award was error because alimony "was not even an issue . . . in the trial." In this regard, Husband correctly notes that the trial court in its 2006 bench ruling did not address alimony. As noted, after the trial, the court continued the case for three weeks

in the hope that a property settlement could be reached. When the parties returned to court, their complaints were dismissed. Logically, then, there was no reason for the court to speak to the issues of alimony and the division of the marital estate at that time. When the parties returned to court on remand, the court clearly responded to Wife's request for alimony when it awarded her monthly support as a percentage of Husband's military disability and noted that this was "a permanent order until she remarries."

A consideration of the relevant factors clearly supported the award of alimony in the present case. Because the evidence does not preponderate against the trial court's findings, we affirm the award of alimony to Wife.

V.

Next, Husband contends that the trial court erred, in his words, by "requiring [Husband] to borrow \$98,000 to give to [Wife] as a marital property division of assets and debts." Husband correctly asserts that at the end of the trial, the court was initially of the opinion that the only way it could achieve a proper division of the estate was to force a sale of all the marital property and divide the net proceeds, if any, after the debts to the bank were paid. Husband asserts that he appeared at the February 2008 hearing with this thought in mind. He contends that the trial court erred when it abruptly changed course and instead ordered a lump-sum cash award to Wife.

Dividing marital property is not a mechanical process but rather is guided by carefully weighing the relevant factors in Tenn. Code Ann. § 36-4-121(c). *Flannary v. Flannary*, 121 S.W.3d 647, 650-51 (Tenn. 2003); *Tate v. Tate*, 138 S.W.3d 872, 875 (Tenn. Ct. App. 2003). Trial courts have broad discretion in fashioning an equitable division of marital property. *Jolly v. Jolly*, 130 S.W.3d 783, 785 (Tenn. 2004); *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983), and appellate courts must accord great weight to a trial court's division of marital property, *Wilson v. Moore*, 929 S.W.2d 367, 372 (Tenn. Ct. App. 1996). It is not this court's role to tweak the manner in which a trial court has divided the marital property. *Morton v. Morton*, 182 S.W.3d 821, 834 (Tenn. Ct. App. 2005). Rather, our role is to determine whether the trial court applied the correct legal standards, whether the manner in which the trial court weighed the factors in Tenn. Code Ann. § 36-4-121(c) is consistent with logic and reason, and whether the evidence preponderates against the trial court's division of the marital property. *Jolly*, 130 S.W.3d at 785-86.

In the present case, Husband does not challenge the classification of the marital property or the trial court's finding that Wife was entitled to \$98,000 as her fair share. Instead, Husband asserts that the trial court erred in awarding wife cash representing the value of the marital home rather than awarding her the home itself or selling all the assets, including the home, and dividing any net proceeds. In dividing marital property, courts are required to allocate interests in a manner consistent with the relevant statutory factors set forth in Tenn. Code Ann. § 36-4-121(c).³ The

³ Tenn. Code Ann. § 36-4-121(c) provides as follows:

In making equitable division of marital property, the court shall consider all relevant factors including:
(continued...)

Supreme Court has observed that although the non-exclusive list of statutory factors may guide our courts, the unique facts and circumstances of each case must govern. **Fisher**, 648 S.W. 2d at 247.

In the present case, the trial court appears to have changed its initial decision which was to award Wife the marital residence in fee simple after further considering the testimony that the home, along with nearly every other marital asset, served as collateral under the agreements executed by Husband and his brothers for their substantial business obligations. In other words, if the court awarded the home to Wife, it might never belong to Wife outright. During the February 2008 hearing, the following exchange occurred between the trial court, counsel for the bank, Mr. Kaze, and the parties' attorneys:

Mr. Kaze: . . . I'm certainly not telling the court what to do, but I think the only thing that the bank can agree to is for this court just to award her some cash amount, then the bank doesn't have anything in it. I mean, as far as getting the bank to release the liens, I don't have any . . . authority. . . .

³(...continued)

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

(10) The amount of social security benefits available to each spouse; and

(11) Such other factors as are necessary to consider the equities between the parties.

Mr. Dunway: That is what our preference is, Your Honor, that . . . my client would like to have her house, but it's impossible for her to have this house without continued encumbrances and difficulties that's going to involve more litigation. Instead, we would ask the court that she be given a lump sum cash award that can be written out of this line of credit of one hundred and twenty thousand dollars. Otherwise, we're looking at a whole lot more paperwork in dealing with the bank and dealing with these three brothers on these various debts because she's going to be tied in in the security interest behind the bank.

Mr. Huff: Basically what you've ordered is that she can't borrow money on the house. And what counsel is wanting to do is have a free and clear home so she can go mortgage it, is what it looks like.

* * *

Mr. Kaze: And, Your Honor, again, . . . the bank's position would be that they don't want to release anything. If the court made a cash settlement for [Wife], that would be - - First Trust would like to see happen.

[Husband]: Sell everything. I want out of it to start with. Just sell everything.

The Court: The only way we can sell anything is to join these brothers back in to sell everything that they've got.

Mr. Dunaway: That's right.

The Court: I don't think they want to do that.

* * *

Mr. Dunaway: Your Honor has the authority to do what we're asking to do, is that they're vested with all assets, they're vested with all debt, a check for one hundred and twenty thousand dollars⁴ would be issued to her. She walks, she has no interest or claims in the marital assets or debts, and they've got it all. So for everything that is out there, when you look at it for interest in equipment, business, and real estate, one hundred and twenty thousand dollars is not even a quarter of the value of the marital estate.

⁴\$120,000 was the amount available on Husband's bank credit line at the time of the February 2008 hearing.

Mr. Huff: Your Honor, we take the previous order and accept that and go on. It puts her in the house and awarded her alimony in solido for that amount.

Mr. Dunaway: It just creates more problems and more litigation for the future if we were to do that, Your Honor.

Mr. Huff: They're not going to foreclose on it, so she's going to be living in the house. She can't borrow on it, but she's got it. That's what she wanted.

* * *

Mr. Kazee: Well, the point is correct, as far as the bank is concerned, that marital residence does stand as collateral for all these loans, not only [Husband and Wife] but for the brothers as well and all their companies, that is correct. I'm not saying they're going to default, but if they do, certainly the bank doesn't take the position they're not going to foreclose on it and take the house. They would. They could foreclose on all the assets.

* * *

Mr. Dunaway: My client finds herself in a position after thirty years of marriage she would have a place to live, she can't sell it. If they want to default and the bank want to foreclose anything, that is the bank's option to do what it wants.

* * *

Mr. Kazee: . . . I'm here today representing [the bank] in the position as, no, they're not releasing anything, and they won't release anything until all the debts are paid in full, and these are open-end guarantees that all the parties have signed

The Court: With that statement in the record, this court is going to award her the cash value of this house. Do you want us to have it appraised? Do you all want to try to reach an agreement on what it's worth?

* * *

Mr. Dunaway: It's already appraised for ninety-eight. It's in the record in 2002.

Mr. Huff: That was the bank for loan purposes, not for sale.

Mr. Dunaway: Your Honor, we're tired of litigating. We'll take the ninety-eight thousand dollar value placed by the bank in 2002.

The Court: All right, draw an order to that effect. We're going to end this litigation one way or the other.

Mr. Huff: Okay.

In our view, the trial court was left with few options with respect to an equitable division of the marital estate. Because of the manner in which Husband and his brothers tied their individual assets to each other's debts, there were numerous marital assets, real and personal property, but none of them could be used to provide Wife her share of the marital estate. In particular, a court-ordered sale of all three brothers' assets was not feasible. Husband's alternative proposal that Wife be allowed to live in the home, but not own it or have access to its equity, would have meant that Wife took from the marriage a rent-free place to live and a pick-up truck while Husband kept the remaining real property and all of his vehicles and business equipment. Further, Wife's award, the house, would have stood for all of the fluctuating debt of Husband and his brothers over which she had no control. The manner in which the trial court divides the marital property cannot be considered without also considering the manner in which the trial court allocates the marital debt. Trial courts have not completely divided a marital estate until they have allocated both the marital property and the marital debt. *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002). We think that in rejecting Husband's proposals in favor of a lump-sum cash award to Wife to come from the line of credit out of which Husband operated, the trial court impliedly found it equitable to allocate all of the marital property and marital debt to the party that in reality controlled both.

Considering all of the relevant factors, we are unable to conclude that the trial court abused its discretion, as Husband contends, by awarding Wife a lump sum cash award from his line of credit for her share of the marital estate. The evidence does not preponderate against the trial court's judgment with respect to the division of the parties' marital estate.

VI.

The judgment of the trial court is affirmed. This case is remanded to the trial court, pursuant to applicable law, for enforcement of its judgment and for collection of costs assessed below. Costs on appeal are taxed against the appellant, Boyce Wayne Boyatt.

CHARLES D. SUSANO, JR., JUDGE